



Saint Louis County

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SUMMARY OF AUGUST 17, 2010 BOARD OF ADJUSTMENT MEETING, 9:00 AM – 11:35 AM, NORTHLAND OFFICE CENTER, VIRGINIA, MINNESOTA.

BOARD OF ADJUSTMENT MEMBERS PRESENT: Marilyn Mueller, Chair
Tom Coombe
Steve Filipovich
Kelly Klun (at 9:15 AM)
Darlene Majkich
Dave Pollock
Diana Werschay – 7

BOARD OF ADJUSTMENT MEMBERS ABSENT: None - 0

NEW BUSINESS:

The first hearing item was **Donald Pearson** in S34, T55N, R16W (Grand Lake).

The applicant was present. *Roanne Axdahl* presented the case to the Board. The property is a 1.37 acre riparian parcel. The applicant owns three lots on West Bass Lake, two of which are vacant lots. The proposed addition would be built from the rear and the side of the existing cabin. There is a steep slope to the lake from the front of the structure. Other principal structures in the area are 45 feet and 75 feet from the shore.

Board member Filipovich asked how old the existing structure is. *Roanne* stated that the foundation looks fairly new, but there is no permit on file for the structure. *Board member Mueller* asked if the deck was ten feet from the lake. *Roanne* stated that the deck is four feet from the lake and the structure is ten feet from the lake. Staff's measurements are precise.

Board member Pollock asked about the topography at the back of the lot. *Roanne* stated the topography is fairly flat and there could be room to build.

Ed Kerzinski, Environmental Services, via report, stated that the owner is proposing an addition to an existing cabin. The owner submitted a septic design by Greg Dinneen, MPCA licensed ISTS designer, for a two bedroom dwelling. The system is to consist of a 1,000 gallon septic tank, 500 gallon pump chamber dosing an 8 foot by 36 foot pressure mound with 10 to 20 inches of clean sand under the rock bed. ISTS expansion area would be located near the primary site on

the north end of the lot near Annie Drive. There is an unknown existing system with no records on file.

Donald Pearson, the applicant, handed out a new cabin configuration to the Board. His intention is to add a bathroom, laundry room and expand existing rooms for the cabin. He is asking for an 18 foot by 26 foot addition. He stated the Giesens want to buy twenty feet off one of his lots because an existing shed is located on the property and he does not want to sell them the land at this time. He wants to live on the property year-round. He did have a bulldozer on the property for a few weeks to get rid of tree stumps and stated he cut down dead balsam trees. He intends to plant new vegetation where he cleared. He believes it is not feasible to downsize the proposed addition any smaller. He has no plans to sell Lot 11 or build on it. He believes that the addition will not be seen as much from the lake with the new configuration.

Board member Coombe asked when the new footings were put in. *Mr. Pearson* stated he put the new skirting in and the footings have been there for years.

No audience members spoke.

CORRESPONDENCE: Roanne Axdahl read three letters into the record from Joe and Cindy Giesen and Thomas Johns in opposition of this request and Keith R. Fulcher on behalf of the Ellsburg Town Board in support of this variance request.

DISCUSSION

Board member Coombe stated that if this was a smaller addition, as close to the lake as it is, he would be willing to give a small addition.

DECISION

Motion by Coombe/Pollock - Denied a variance with the following findings of fact to allow a 540 square foot addition to a single family dwelling located ten feet from the shoreline. The applicant would be allowed a 106 square foot addition to the rear of the principal structure by ordinance.

1. The applicant's request is substantial because he is asking for an addition that will more than double the size of his structure at only a 10 foot shoreline setback.
2. The variance will not have an effect on government services because the request is for a principal structure addition and the dwelling is located on an already developed road and has a private sewage treatment system.
3. If approved, the variance would change the character of the neighborhood because the structure is within the shore impact zone while all of the other structures in the area are set back a minimum of 45 feet from the shoreline. This structure will also be very visible from the lake.
4. The following alternative(s) could be used to eliminate the need for variance or decrease the extent of the variance being requested: limiting the structure addition to 106 square feet.
5. The practical difficulty occurred because this is an existing structure that was constructed prior to the lakeshore standards.
6. Taking everything already mentioned into consideration, the variance should not be approved because: (1) the applicant is more than doubling the size of the structure. (2)

The structure would change the character of the neighborhood because it is entirely within the shore impact zone while other principal structures are set back a minimum of 45 feet from the shoreline. (3) There has been extensive vegetation removal in the shore impact zone.

In Favor: Coombe, Filipovich, Klun, Majkich, Mueller, Pollock, Werschay – 7

Opposed: None - 0

Motion carried 7-0

The second hearing item was **Sylvia Kubicki** in S24, T51N, R16W (Grand Lake).

The applicant was not present. Robert Kubicki spoke on behalf of the applicant as executor of her estate. *Roanne Axdahl* presented the case to the Board. The property is a 0.39 acre riparian parcel. The applicant is proposing a fireplace/chimney three feet from the house. The applicant is willing to move the structure to the required 75 foot lake setback.

Ed Kerzinski, Environmental Services, via report, stated the owner is proposing a three bedroom year-round structure. A letter dated June 28, 2010 from Shelton Excavating, MPCA licensed ISTS installer/designer, stated that a preliminary site evaluation of the property occurred. Septic primary and replacement sites were identified on the property for the proposal. The system will either be a seepage bed or trench system. The sites are located on the south end of the lot near Sunny Lane.

Robert Kubicki, on behalf of the applicant, stated the cabin is about 82 years old and the property was purchased by the family in the 1920s. It is important that they keep the look of the cabin. The siding, color and roofline will be maintained. The intent is to upgrade the cabin with amenities, such as indoor plumbing. He reviewed the plans with his neighbors in detail, showing the layout and how it will look on the outside and they voiced support for this. The variance request is for the chimney which will stick out three feet.

No audience members spoke.

CORRESPONDENCE: Roanne Axdahl read two letters into the record from Brooke Shannon, Town of Grand Lake, and Tom and Darlene Olby in support of this variance request.

DISCUSSION

Board member Coombe stated he is not in favor of the verbiage of the chimney deal. He is in favor of the variance request. *Board member Pollock* stated he agreed.

DECISION

Motion by Mueller/Filipovich - Approved a variance with the following findings of fact to allow an addition to the existing structure no more than 46 percent of lot width for only the chimney addition.

1. The applicant is proposing to increase the structure width allowed by 6 percent or 3 feet.
2. The variance will not have an effect on government services because the request is for an addition to an existing residential structure.

3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because this area is highly dense with many structures over 40 percent of lot width. Also because of the narrow width of the lots in this plat, 40 percent does not allow a very wide structure to begin with.
4. The following alternative(s) could be used to eliminate the need for variance or decrease the extent of the variance being requested: placing the 3 foot wide chimney to the rear instead of to the side.
5. The practical difficulty occurred because this is 50 foot wide lot and the structure is an existing structure built prior to the shoreland standards.
6. Taking everything already mentioned into consideration, the variance request should be approved for the 46 percent lot width due to the fact that the lot is very narrow.

No conditions were required

In Favor: Filipovich, Klun, Majkich, Mueller, Werschay – 5

Opposed: Coombe, Pollock - 2

Motion carried 5-2

The third hearing item was **Pamela Lubina** in S16, T60N, R21W (French).

The applicant was not present. *Robert Stevenson* from the Trenti Law Firm will speak on her behalf. Jenny Bourbonais presented the case to the Board. The old plat is the Plat of Side Lake Homesite Addition which was an approved subdivision platted by the Department of Natural Resources (DNR) in 1988. The applicant does not wish to apply for a new subdivision plat. The purpose behind the lot adjustment is so that the property owners of Lot 11 can legally own the access driveway that they use to enter their property. The proposed adjustment involves a 0.37 acre of land that would be added to Lot 11. The lot adjustment would not have a negative effect on the zoning requirements for either lot. There is a topographical issue as there is a steep hill going down towards the lake. At the August 12 Planning Commission (PC) hearing, the PC recommended to move this case forward to the Board of Adjustment with PC approval.

Donna O'Connor, Environmental Services, via report, stated that the Lubina property is served by a seepage bed that was installed in July 1992. The portion of the lot to be split off does not affect the septic system and is not useful for septic replacement area.

Robert Stevenson, who spoke on behalf of the applicant, stated that the driveway in question was built in approximately 1955. It was built long before the state did the plat. The lot did not include the road. He stated that the driveway is the reason for the corner being split off.

No audience members spoke.

CORRESPONDENCE: None.

DECISION

Motion by Majkich/Coombe - Approved a variance with the following findings of fact to allow a lot line adjustment without platting.

1. The request of the applicant is not substantial because the applicant is asking for variance to allow for a lot line/boundary adjustment where St. Louis County Ordinance 33 does not currently allow this without the need for re-platting the property. The zone district requirements will not be adversely affected for either lot.
2. The variance will not have an effect on government services because there is existing development on both properties; this adjustment would allow for Lot 11 to legally own the driveway used to access the property currently.
3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because the driveway already exists and is an established use.
4. The following alternative(s) could be used to eliminate the need for variance or decrease the extent of the variance being requested: An easement for use of the driveway would eliminate the need for variance; however, there could be potential liability issues without legal ownership of the driveway by Lot 11.
5. The practical difficulty occurred because the driveway is an existing, established use.
6. Taking everything already mentioned into consideration, the variance should be approved because this adjustment would not have a negative effect on zoning requirements for either lot, neighboring property owners, access, wetland impacts or septic area that would normally justify the need to re-plat property.

No conditions were required.

In Favor: Coombe, Filipovich, Klun, Majkich, Mueller, Pollock, Werschay – 7

Opposed: None – 0

Motion carried 7-0

The fourth hearing item was **Patricia Lahti** at S14, T61N, R13W (unorganized).

The applicant was not present. *Charlie Chernak*, Bear Island Surveying, spoke on behalf of the applicant. *Jenny Bourbonais* presented the case to the Board. The property is located on the east side of Bear Island Lake. The applicants wish to create four lots from a Certificate of Survey Subdivision. The property located between Government Lot 1 and the existing road is both state and federally owned and it would be difficult to get an easement. There are also wetland issues that limit where a road could be built. At the August 12, 2010 meeting, the Planning Commission (PC) voted to move this case forward to the Board of Adjustment with a recommendation to approve.

Donna O'Connor, Environmental Services, via report, stated that the Lahti property has no permitted septic system. If the Certificate of Survey Subdivision is approved, the lots will need to be evaluated based on limiting factors as specified in Ordinance 55. A preliminary soil evaluation of the proposed lots was conducted in June 2009 by John Wavrin, ISTS designer; he found adequate soil for mound-type systems.

Charlie Chernak stated that preliminary work was done for the septic systems. Every lot will meet the zoning standards. They would have preferred to have a road, but the wetland issues are significant and getting across Federal land is difficult. They would have also had to cross private land and would have run into wetland issues. The Lahti family has also owned parcels on Bear Island for many years.

CORRESPONDENCE: None.

DECISION

Motion by Mueller/Klun - Approved a variance with the following findings of fact to allow the subdivision of a property by Certificate of Survey Subdivision process:

1. The request of the applicant is not substantial because the applicant is asking for variance to allow for a lot line/boundary adjustment where St. Louis County Ordinance 33 does not currently allow this without the need for re-platting the property. The zone district requirements will not be adversely affected for either lot.
2. The variance will not have an effect on government services because there is existing development on both properties; this adjustment would allow for Lot 11 to legally own the driveway used to access the property currently.
3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because driveway already exists and is an established use.
4. The following alternative(s) could be used to eliminate the need for variance or decrease the extent of the variance being requested: An easement for use of the driveway would eliminate the need for variance; however, there could be potential liability issues without legal ownership of the driveway by Lot 11.
5. The practical difficulty occurred because the driveway is an existing, established use.
6. Taking everything already mentioned into consideration, the variance should be approved because this adjustment would not have a negative effect on zoning requirements for either lot, neighboring property owners, access, wetland impacts or septic area that would normally justify the need to re-plat property.

Conditions of the variance are as follows.

1. The Certificate of Survey Subdivision shall be in accordance with County Surveyor and all other applicable standards.
2. Addressing shall be in accordance with 911 Communications standards.
3. At such time that road access becomes available; the road shall be constructed in accordance with Public Works road standards.

In Favor: Coombe, Filipovich, Klun, Majkich, Mueller, Pollock, Werschay – 7

Opposed: None – 0

Motion carried 7-0

The fifth hearing item was **Thomas Boitz** in S35, T64N, R13W (unorganized).

The applicant was present. *Jenny Bourbonais* presented the case to the Board. The proposed parcels will not have direct access to a public road due to limited road access through state and federally owned lands. The Certificate of Survey subdivision would create four parcels off of a private road where currently three parcels exist. From the Echo Trail, the property is accessed off of Hanson Lake Road, which runs through state and federal land until it reaches private land approximately one mile from the subject property. Hanson Lake Road is a state forest road up to Hanson Lake; from there, the property owners have Department of Natural Resources (DNR)

leases to use the road. The end of Hanson Lake Road branches off into a private road that is used by three private property owners, including the applicant. If this property were platted, the road would not be improved to meet platting standards. The improvement to the road would also impact wetlands. The north parcel would have 5.1 acres and the south parcel would be 13.2 acres.

At their August 12, 2010 meeting the Planning Commission (PC) voted to move this case forward to the Board of Adjustment with a recommendation to approve.

Donna O'Connor, Environmental Services, via report, stated the Boitz property is served by a mound system installed in 2006. Replacement area should be designated by an ISTS designer. If the Certificate of Survey Subdivision is approved, the new lot will need to be evaluated and two septic system areas sited on the new lot.

Charlie Chernak, Bear Island Surveying, stated there was a deed restriction in place that the property could only be split one other time. To upgrade the road would be a huge undertaking, three miles of road for one subdivision. There are adequate parcels here. The intent was to create a nice lake parcel.

Tom Boitz, the applicant, stated that they maintain the road with their own expense. They would like to leave one piece of property for their children.

CORRESPONDENCE: Jenny Bourbonais read one letter into the record from Barry and Millie Bissonette in support of this variance request. The letter was submitted into the record by Charlie Chernak, Bear Island Surveying.

DECISION

Motion by Majkich/Coombe - Approved a variance with the following findings of fact to allow the subdivision of a property by Certificate of Survey Subdivision process:

1. The request of the applicant is not substantial because the applicant is asking for variance to allow for a lot line/boundary adjustment where St. Louis County Ordinance 33 does not currently allow this without the need for re-platting the property. The zone district requirements will not be adversely affected for either lot.
2. The variance will not have an effect on government services because there is existing development on both properties; this adjustment would allow for Lot 11 to legally own the driveway used to access the property currently.
3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because driveway already exists and is an established use.
4. The following alternative(s) could be used to eliminate the need for variance or decrease the extent of the variance being requested: An easement for use of the driveway would eliminate the need for variance; however, there could be potential liability issues without legal ownership of the driveway by Lot 11.
5. The practical difficulty occurred because the driveway is an existing, established use.
6. Taking everything already mentioned into consideration, the variance should be approved because this adjustment would not have a negative effect on zoning requirements for either lot, neighboring property owners, access, wetland impacts or septic area that would

normally justify the need to re-plat property.

Conditions of the variance are as follows.

1. The Certificate of Survey shall be in accordance with County Surveyor standards.
2. Addressing shall be in accordance with 911 Communications standards.

In Favor: Coombe, Filipovich, Klun, Majkich, Mueller, Pollock, Werschay – 7

Opposed: None – 0

Motion carried 7-0

The sixth hearing item was **Todd Toman** in S7, T62N, R14W (Breitung).

The applicant was present. *Jenny Bourbonais* presented the case to the Board. The subdivision ordinance requires that a person need not apply for subdivision plat approval when there is the creation of two lots along a private driveway. There is topography towards the rear of the property. Alternatives that exist would be to re-combine the lakeshore property to make a conforming parcel and provide easement to the lake and to continue using the property seasonally for camping/RV. The three acre parcel with 330 feet of lake frontage would be a conforming lot.

Donna O'Connor, Environmental Services, via report, stated the Toman property is served by a trench system sized for two bedrooms that was installed in 1999. The system was inspected on May 16, 2010 and was issued a Certificate of Compliance. Replacement area has been designated.

Todd Toman, the applicant, presented a powerpoint and would like to discuss lot configurations and the reasons why the variance should be granted. The original configuration of the lot was 16.72 acres in 2005. Mr. Klima approached Mr. Toman to purchase some land. They spoke with a real estate attorney to draft up the purchase agreement. They also had a certified survey done. There was a certified appraisal done in order to obtain a loan.

Mr. Toman stated that his parcel has 180 feet of lake frontage and 8.5 acres on the east parcel. They do not meet the lake frontage requirements, but they more than meet the acreage requirements. He stated Mr. Klima was approved for a septic permit on the property. In 2009, Mr. Klima applied for a land use permit for a boathouse and was told that the lot was nonconforming. Mr. Toman felt distressed because neither lot was compliant, and neither property owner could build a boathouse.

He believes they should be granted the variance because they more than meet the acreage requirements. They went to their adjoining neighbors and attempted to purchase additional land and were unable to do so. The east neighboring landowner is the state of MN which is not in the business of selling land. The west neighboring landowner, RGGGS, is not interested in selling any of their land.

Mr. Toman stated he is prepared to put his two separate parcels into one parcel. The Klimas will agree to move their shore setback from 75 feet to 90 feet. There will be good coverage from the lake and no vegetation will be removed. Both landowners want to increase vegetation to 50

percent of their lot. They will also agree to not further subdivide either property.

He believes the reason they are here is because they are short on lake frontage. He did attempt to purchase additional lake frontage from both the state of Minnesota and from RGGGS and was unable to do so. The back lots will not be improved upon because of topography. They are also in financial hardship because one cannot buy each other out without financial risk. He feels they are stuck between a rock and a hard place.

When Mr. Toman purchased this property, it was purchased as a cabin.

Board member Filipovich asked when the property was purchased. *Mr. Toman* stated 2005.

Board member Filipovich asked if zoning was ever discussed with the number of professionals working on the land sale. *Mr. Toman* stated no. *Board member Mueller* stated that it was not the responsibility of the other professionals to check and see if it was a conforming lot. *Mr. Toman* stated there were a number of professionals taking care of this and it was an oversight.

No audience members spoke.

CORRESPONDENCE: Jenny Bourbonais read two letters into the record from Zdenek Mestenhauser and Roger Fossum in opposition of this variance request.

DISCUSSION ON FIRST MOTION

Board member Pollock asked if there could be a condition that if adjoining property is available for sale in the future the additional land must be purchased to conform to the 200 feet of lot width. He stated this would be a way to correct a situation that should never have happened.

Board member Majkich asked how the Board can make someone purchase property. *Board member Coombe* stated that if the kicker could be added 'for sale at a reasonable price.' He added when and/or if property becomes available for sale in lot form from the state of MN or RGGGS or any predecessors, the applicants make a good faith effort to buy enough property to make their lots conforming. *Board member Klun* said that a 'good faith effort' could be writing a letter and asking for the property. She feels the restrictions are impractical. It would be difficult to sell land that can never be sold.

Mary Anderson, Planning and Development Department, asked the board to consider how in the future would staff ever track this to see if additional land became available or decide if a good faith effort was made, or not?

Board member Klun stated that missing the ordinance requirements was surprising and asks if this is a good faith miss. *Board member Mueller* stated there are other alternatives. They could combine the lot and make one conforming lot with the access to the nonriparian lots. *Board member Majkich* stated that, as a realtor, she did not know the ordinance requirements and that every sale is a learning experience and things are missed. *Board member Coombe* stated that he believes Mr. Toman made an honest mistake. He added that it appears that the land was split so that Mr. Toman did not give up any buildings. He feels that there was no malicious intent to violate.

Board member Pollock stated that there are alternatives. Even in the future, they can utilize the

property until they are able to buy. The requirement is 200 feet. He feels it can be rectified in the future. A denial would make the applicants work on the property and get it into compliance.

FIRST DECISION

Motion by Coombe/Werschay – Approve a variance with the following findings of fact to allow parcels 150 feet and 180 feet in width where 200 feet is required, and to allow the creation of parcels created along a private driveway that do not meet the requirements of the zoning ordinance:

1. The request of the applicant is substantial because there is a 50 foot (25 percent) variation from lot width requirement for the west parcel and 20 foot (10 percent) variation from lot width requirements for the east parcel. In addition, this proposal does not meet two criteria of the Subdivision Ordinance for property to be exempt from platting.
2. The variance will not have an effect on government services because it is not known how granting this variance would affect government services.
3. If approved, the variance would not change the character of the neighborhood or be detrimental to the neighborhood because there will be one structure.
4. The following alternatives could be used to eliminate the need for variance or decrease the extent of the variance being requested: none. The applicant has already attempted to purchase additional land, but was denied by the state of Minnesota and RGGS.
5. The practical difficulty occurred because the applicant had the property surveyed, split and recorded and relied on their attorney and surveyor to ensure the division was compliant with Zoning and Subdivision Ordinances.
6. Taking everything already mentioned into consideration, the variance should be granted.

No conditions would be required. The applicant would have to combine the two parcels he owns to comply with “Ordinance 33, Article I, Section 4.04 c. to allow the creation of three parcels off a private driveway per forty or government lot, where the creation of two parcels off a private driveway is allowed.”

In Favor: Coombe, Majkich, Werschay - 3

Opposed: Filipovich, Klun, Mueller, Pollock – 4

Motion fails 3-4

DISCUSSION ON SECOND MOTION

Board member Werschay stated that she believes Mr. Toman did not do this intentionally and that mistakes happen. *Board member Klun* stated a good faith mistake can be made, but there are consequences to live with that mistake. *Board member Mueller* stated she agreed with Board member Klun.

Board member Coombe discussed the findings of fact and asked how the Board could say that the applicant knew what he was doing and that it would change the neighborhood? The right thing to do would be to vote for approval.

Board member Klun asked the applicant about when the survey was done. *Mr. Toman* replied the survey was done in the summer of 2007. *Board member Klun* asked if the applicants discussed what he wanted to do with the surveyor. *Mr. Toman* stated the surveyor knew what he was doing and did not have any information on the split. He was under the impression this was under their

scope of work. *Board member Klun* asked if he made his intention known in the beginning that the lot would be sold to build on. *Mr. Toman* stated that he had a discussion on where to put the garage and other auxiliary buildings on the lot. *Board member Pollock* stated the survey creates boundaries and the surveyors are not potentially liable. *Mr. Toman* stated there is liability if there is potential to be sold.

Board member Filipovich asked Mr. Toman if there was financing on the property before he split it. *Mr. Toman* stated yes, he had a certified appraisal and had to refinance in 2007. *Board member Filipovich* asked what the appraisal said was zoned. *Mr. Toman* stated it went through, but it would have been accurate.

DECISION

Motion by Filipovich/Mueller - Denied a variance with the following findings of fact to allow the after-the-fact creation of two parcels.

1. The request of the applicant is substantial because there is a 50 foot (25 percent) variation from lot width requirement for the west parcel and 20 foot (10 percent) variation from lot width requirements for the east parcel. In addition, this proposal does not meet two criteria of the Subdivision Ordinance for property to be exempt from platting.
2. The variance will have an effect on government services because it would increase the lakeshore development level beyond what is allowed by the Zoning Ordinance and the Lake Vermilion Land Use Plan.
3. If approved, the variance would change the character of the neighborhood or be detrimental to the neighborhood because the density allowed by the RES-10 zoning will be altered at the lakeshore due to the fact that even if the property was not split, only one dwelling would be allowed at the lake based on lot width requirements.
4. The following alternatives could be used to eliminate the need for variance or decrease the extent of the variance being requested: the applicant could purchase more property to meet the lot width requirements, and has taken measures to do so, but was denied the opportunity by surrounding property owners. The property could also be re-combined into the original 3 acre parcel, and 12 acre back lot with an easement for lakeshore use.
5. The practical difficulty occurred because the applicant had the property surveyed, split and recorded and relied on their attorney and surveyor to ensure the division was compliant with Zoning and Subdivision Ordinances.
6. Taking everything already mentioned into consideration, the variance should be denied because, in order to change the density of development allowed by zoning, the property would have to be re-zoned. The Lake Vermilion Land Use Plan, adopted in July of 2009, set the zoning for this area at one dwelling per 200 feet of lot width; significant time and effort went into the decision to zone this area as RES-10.

In Favor: Filipovich, Klun, Mueller, Pollock – 4

Opposed: Coombe, Majkich, Werschay - 3

Motion carried 4-3